92-1709

Case No. _____

Supreme Court, U.S.
FILED
APR 30 1993
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1992

URBANO TORRES-LABRON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX

TO

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ROBERT AUGUSTUS HARPER
Law Firm, P.A.
300 West Park Avenue/P.O. Box 10132
Tallahassee, Florida 32302-2132
(904) 224-5900/fax (904) 224-9800
FL Bar No. 127600/GA Bar No. 328360
COUNSEL FOR PETITIONER

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IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA

vs. 91-04014

URBANO TORRES-LABRON INDICTMENT
_____/

THE GRAND JURY CHARGES:

On or about February 6, 1991, in the Northern District of Florida, the defendant,

URBANO TORRES-LABRON

an inmate in the Federal Correctional Institution, Tallahassee, Florida, did knowingly possess a prohibited object, to wit, a weapon, in violation of Title 18, United States Code, Section 1791(a)(2).

A TRUE BILL:
/s/
FOREMAN
9 April 1991
DATE

/s/
KENNETH W. SUKHIA
United States Attorney
/s/
ANTHONY J. JENKINS
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA

vs. CASE NO. TCR 91-04014

URBANO TORRES-LEBRON,
Defendant.
_____/

DEFENDANT'S REQUESTED
SPECIAL JURY INSTRUCTION

The Defendant, URBANO TORRES-LEBRON, requests that the following Special Jury Instruction (Special Instruction Number 5, Pattern Jury Instructions, U.S. Eleventh Circuit) be given:

FILED IN OPEN COURT THIS

July 24, 1991
CLERK, U.S. DISTRICT
COURT, NORTH. DIST. FLA.

LESSER INCLUDED OFFENSE

In some cases the law which a Defendant is charged with breaking actually covers two separate crimes-one is more serious than the second, and the second is generally called a "lesser included offense."

So, in this case, with regard to the offense charged in Count I, if you should find the Defendant "not guilty" of that crime as defined in these instructions, you should then proceed to decide whether the Defendant is guilty or not guilty of the lesser included offense of "Possessing a prohibited object, not a weapon, that threatens the order, discipline, or security of a prison while an inmate of the Federal Correctional Institution at Tallahassee, Florida.

Respectfully submitted,

ROBERT J. VOSSLER
Federal Public Defender

/s/
William R. Clark Jr.
Asst. Public Defender
106 N. Bronough St.
Tallahassee, FL 32301
(904) 681-7439

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by hand to Anthony Jenkins, Assistant United States Attorney, 315 South Calhoun Street, Suite 510, Tallahassee, FL 32301-1841 this 24 day of July, 1991.

/s/
William R. Clark Jr.

There is a matter about the object. There is a lesser included offense here under Subparagraph (d)(1), the possession of any object that threatens the order, discipline, security of a prison or the life, health or safety of an individual, which is probably the primary issue of fact for the jury, which this weapon is an object that threatened order, discipline or security.

THE COURT: That's not a lesser included.

MR. HARPER: Yes, sir, it seems to be pretty clear to me it's a lesser included.

THE COURT: It's not a lesser penalty.

(R2-29).

MR. HARPER: Yes, sir, it's a six-month penalty.

THE COURT: Well, let me see.

MR. JENKINS: Under (2)(b)(5).

THE COURT: Well, you're right. Under 1791(c) -- no, under --

(R2-30).

MR. CLARK: Your Honor, I would like to request -- I didn't see a special jury instruction for a lesser included offense in your instructions. I think based on the testimony we've had today, these witnesses

that Mr. Torres-Lebron has put on, they used this instrument, Government's Exhibit 1, as a tool to chop up a salad. I think, given the jury instruction on the lesser included offense that this is a prohibited object, not a weapon, that threatens the order, discipline or security of the prison, would be appropriate.

MR. JENKINS: Your Honor, I would object to this. We went over this this morning. This is not a lesser included offense of the charge. This is a separate and substantive crime. It's no different than a defendant charged with robbery and you are going to charge him with burglary as a lesser included. There is absolutely no facts to support in this theory a lesser included, because there are no lesser included.

(R2-158).

This is a separate misdemeanor offense that is not part of the definition of a weapon as the court has defined that, and as the statute intended. We went through that this morning. There were a -- a weapon is anything other than a firearm or destructive device or ammunition, or anything that's intended to be used or designed as a weapon. That is the definition of a weapon, and this other thing they said is designed or intended to be used as a weapon. Those are the two things. Now, interestingly, statutorily, as far as placement of that particular section, it's placed after you talk about contraband, such as narcotics. That's where you find this in the statutory scheme of things. This is definitely not a lesser included offense. It's a separate

offense. It's not contained within the definition as the court is going to instruct the jury, and it's not the intent of the Legislature to be included as the definition of a weapon.

(R2-159).

MR. HARPER: What I was going to say is, when you read the indictment, it says that he was in possession of a prohibited object, to wit, a weapon. If you look at the statute, 1791, there are other things that are similar, and those are narcotic drugs, and followed by a separate section on the controlled substances. I think that analogy is pretty clear that there is an issue of fact that a jury could look at an instrument like this and say as a matter of fact we find that this particular item is not a weapon, but is, in fact, a contraband item, a prohibited object, but is an object that threatens the order, discipline, security of the prison, as one of the witnesses testified under cross-examination.

So I think it's -- the statutory issue is that in

(R2-160).

the indictment it's a prohibited object. What kind of prohibited object, whether it be a weapon or another type of device, is a question for the jury to resolve, and they could resolve it in their way. And I would submit under the statutory scheme here it's perfectly appropriate with the lesser offense test here that the jury could look at these facts and say this particular item, Exhibit 1, is not

a weapon, but is, in fact, an object to threaten the order, discipline and security of the prison.

THE COURT: Well, I guess I don't -- I don't see it that way. I think the government has made it's case, and it has to, by returning this indictment, and they define in the indictment the nature of the prohibited object. And I think, frankly, they are stuck with it. If this jury should determine that this is not a weapon, then your client is not guilty. I think that's -- that's it. And -- and if, for example, the government has charged a -- an object such as a narcotic drug, LSD, something like that --

(R2-161).

MR. HARPER: We request a lesser included offense included in 1791, (d)(1)(F), Your Honor.

THE COURT: I have considered that, and I don't think it's a lesser included, so that request is denied.

* * *

THE COURT: As I said to you last night, I think if they don't think this is a weapon, then the defendant is entitled to be found not guilty.

MR. HARPER: We would object accordingly to the verdict form that doesn't include that, Your Honor.

(R3-10).

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA,

Plaintiff, TCR 91-04014-WS

v.

URBANO TORRES-LABRON,

Defendant.
_____/

VERDICT

We, the jury, find as follows:

As charged in the indictment, Defendant URBANO TORRES-LABRON, is

__X__ GUILTY _____ NOT GUILTY

So say we all, this 25 day of July, 1991.

/s/ Maxwell S. Clark
FOREPERSON

FILED IN OPEN COURT THIS

July 25, 1991
CLERK, U.S. DISTRICT
COURT, NORTH. DIST. FLA.

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. CASE NO. TCR 91-04014

URBANO TORRES-LABRON,

Defendant.

MOTION FOR NEW TRIAL

Defendant, by and through undersigned counsel, and pursuant to Rule 33, Federal Rules of Criminal Procedure, moves the Court to grant a new trial, and alleges:

1. The Court erred in denying Defendant's motion for judgment of acquittal made at the conclusion of the case in chief of the government.

2. The Court erred in denying Defendant's motion for judgment of acquittal made at the conclusion of all the evidence.

3. The Court erred in denying Defendant's requested jury instruction on the lesser included offense contained in 18 U.S.C. § 1791(d)(1)(F).

4. The Court erred in granting the government's motion in limine of the Defendant's proffered defense of selective prosecution.

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTH. DIST., FLA.
TALLAHASSEE, FLA.

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FILED

WHEREFORE, Defendant prays the Court to enter its order granting a new trial accordingly.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument was furnished to:

Anthony J. Jenkins
Assistant United States Attorney
315 South Calhoun Street, Suite 510
Tallahassee, Florida 32301-1841

by ~~hand~~/mail delivery this 29th day of July, 1991.

Respectfully submitted,

/s/
ROBERT AUGUSTUS HARPER
Law Firm, P.A.
300 West Park Avenue
Post Office Box 10132
Tallahassee, Florida 32302-2132
(904) 224-5900/FAX 224-9800

FL BAR NO. 127600
GA BAR NO. 328360

Counsel for Appellant **TORRES-LABRON**

TORRES.mnt

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. CASE NO. TCR 91-04014

URBANO TORRES-LABRON,

Defendant.

AMENDED MOTION FOR NEW TRIAL

The Defendant, by and through undersigned counsel, and pursuant to Rule 33, Federal Rules of Criminal Procedure, moves the Court to grant a new trial, and alleges:

1. The Court erred in denying Defendant's motion for judgment of acquittal made at the conclusion of the case in chief of the government.

2. The Court erred in denying Defendant's motion for judgment of acquittal made at the conclusion of all the evidence.

3. The Court erred in denying Defendant's

requested jury instruction on the lesser included offense contained in 18 U.S.C. § 1791(d)(1)(F).

4. The Court erred in precluding the defense from arguing to the jury in support of its theory of defense that the object in question was an item controlled under 18 U.S.C. § 1791(d)(1)(F), and a lesser included offense.

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTH. DIST., FLA.
TALLAHASSEE, FLA.

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FILED

5. The Court erred in granting the government's motion in limine of the Defendant's proffered defense of selective prosecution.

WHEREFORE, Defendant prays the Court to enter its order granting a new trial accordingly.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument was furnished to:

Anthony J. Jenkins
Assistant United States Attorney
315 South Calhoun Street, Suite 510
Tallahassee, Florida 32301-1841

by ~~hand~~/mail delivery this 21st day of August, 1991.

Respectfully submitted,

/s/_____
ROBERT AUGUSTUS HARPER
Law Firm, P.A.
300 West Park Avenue
Post Office Box 10132
Tallahassee, Florida 32302-2132
(904) 224-5900/FAX 224-9800

FL BAR NO. 127600
GA BAR NO. 328360

Counsel for Appellant **TORRES-LABRON**

TORRES.amn

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA

v. Case Number TCR 91-04014-01

URBANO TORRES-LABRON
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, URBANO TORRES-LABRON, was represented by Robert Harper, Tallahassee, Florida.

The defendant was found guilty on count(s) 1 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

TITLE & SECTION	NATURE OF THE OFFENSE	DATE CONCLUDED	COUNT NUMBER
18 USC 1791(a)(2)	Possession of a Prohibited Object by an Inmate at a Federal Correctional Institution, to wit, a weapon.	2/6/91	1

As pronounced on December 2, 1991, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $50.00, for count(s) 1, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this 3rd day of December, 1991.

/s/
WILLIAM STAFFORD
Chief United States District Judge

Defendant's SSAN: 112-48-3290
Defendant's Date of Birth: 12/25/55
Defendant's address: 180 S. Street, New York, New York 10038

1991 DEC -3 PM 4:22

FILED

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. CASE NO. TCR 91-04014

URBANO TORRES-LABRON,

Defendant.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that URBANO TORRES-LABRON, Defendant, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the final judgment and sentence rendered on 02 December 1991.

Respectfully submitted,

/s/

URBANO TORRES-LABRON
(05660-069)
Federal Correctional Institution
Post Office Box 7007
Marianna, Florida 32446
Pro Se Appellant

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTH. DIST., FLA.
TALLAHASSEE, FLA.

91 DEC -3 PM 4:05

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument was furnished to:

Anthony J. Jenkins
Assistant United States Attorney
315 South Calhoun Street, Suite 510
Tallahassee, Florida 32301-1841

by ~~hand~~/mail delivery this 03d day of December, 1991.

Respectfully submitted,

/s/
URBANO TORRES-LABRON
(05660-069)
Federal Correctional Institution
Post Office Box 7007
Marianna, Florida 32446
Pro Se Appellant

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 91-4159

Non-Argument Calendar

D.C. Docket No. TCR 91-04014-01

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

URBANO TORRES-LABRON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(November 25, 1992)

Before HATCHETT and DUBINA, Circuit Judges, and TUTTLE, Senior Circuit Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1.

Judgment Entered: November 25, 1992
For the Court: Miguel J. Cortez, Clerk

By: /s/
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 91-4159

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus,

URBANO TORRES-LABRON,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Florida

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ON PETITION(S) FOR REHEARING
(November 25, 1992)

Before HATCHETT and DUBINA, Circuit Judges, and TUTTLE, Senior Circuit Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant, URBANO TORRES-LABRON, is denied.

ENTERED FOR THE COURT:

/s/
UNITED STATES CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

Anthony J. Jenkins
Assistant United States Attorney
315 S. Calhoun Street, Suite 510
Tallahassee, Florida 32301

by ~~hand~~/mail delivery this 22th day of April, 1993.

Respectfully submitted,

ROBERT AUGUSTUS HARPER
Law Firm, P.A.
300 West Park Avenue
Post Office Box 10132
Tallahassee, Florida 32302-2132
(904) 224-5900/fax (904) 224-9800

FL Bar No. 127600
GA Bar No. 328360

Counsel for Appellant
TORRES-LABRON

xc: Urbano Torres-Labron

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